

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943

WP(C) NO. 31410 OF 2012

PETITIONER:

G.LAKSHMY NARAYANA SHARMA
S/O. GOPALAKRISHNAN POTTI D., L.N.VIHAR,
VENKULAM EDAVA P.O.,
THIRUVANANTHAPURAM DISTRICT-695 311.

BY ADVS.
SRI.P.GOPAL
SRI.B.MURALEEDHARAN

RESPONDENTS:

- 1 THE KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR & CHAIRMAN,
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM- 695 023
- 2 THE MANAGING DIRECTOR
KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT
BHAVAN, FORT, THIRUVANANTHAPURAM- 695 023
- 3 THE DEPUTY CHIEF ACCOUNTS OFFICER (IA)
KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, THIRUVANANTHAPURAM- 695 023
- 4 THE DISTRICT TRANSPORT OFFICER
OFFICE OF THE KERALA ROAD TRANSPORT CORPORATION,
KOLLAM - 691 001

BY ADV SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC

SRI T P SAJAN SC KSRTC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Challenge has been laid to communication/order dated 16.07.2012 (Ext.P3) whereby in pursuance to the directions contained in the order dated 27.03.2012 rendered in W.P. (C).No.6812/12 certain benefits were extended to the petitioner by denying other claim benefits giving cause to file the present writ petition.

2. Petitioner had entered into the service as Reserve Driver in Kerala State Road Transport Corporation (hereinafter called 'KSRTC') on 28.07.2000 and was given promotion as Grade-II with effect from 28.07.2001. The basic pay of the petitioner at the relevant point of time was Rs.6650/-. Probation period was completed on 28.08.2003. Thereafter petitioner was suspended for a period from 23.11.2005 to 25.11.2006. Appeal Ext.P1 dated 14.11.2006 was preferred which resulted into modification of the imposition of the punishment ie., withholding of two increments for a period of two years. The grievance of the

petitioner in the aforementioned writ petition was for fixation of the pension and other permissible allowances as well as for fixation of basic pay, for the petitioner on 11.10.2010 was promoted as grade-I. His basic pay was Rs.6870/-, he claimed as Rs.7310/-. On acquiring the age of retirement, superannuated on 31.03.2011. A representation Ext.P2 was submitted resulting into directions of this Court in W.P(C).6812/12.

3. Sri.P.Gopal, learned counsel appearing for the petitioner submitted that the pith and substance of the pleadings and the representation reveals that the option exercised by the petitioner was under Rule 28A(b) of the Kerala Service Rules ('KSR' for short) and not 28A(a) which was inadvertently mentioned and this was brought to the notice of the authority at the time of personal hearing. But while rejecting the case in part, the respondents also dissuade away from the provisions of 28A(b) for the simple reason that petitioner for the period he remains suspended has not been paid the salary and arrears. This Court during

the pendency of the writ petition passed an interim order and against the claim of Rs.1,19,300/- arrears to the tune of Rs.64,612 have been paid and balance Rs.54,721/- along with the interest is due.

4. On the other hand, Sri.T.P.Sajan learned counsel appearing on behalf of KSRTC supported the case on the premise that all eligible leave salary arrears have been disbursed and there is nothing outstanding towards the petitioner. The service book of the petitioner was already forwarded to Kollam for verification and in case any further amount is due it will be released immediately.

5. I have heard the learned counsel for the parties and appraised the paper book. The relevant portion of the impugned order Ext.P3 dated 16.7.2012 reads as under:

"The Hon'ble Court vide its order dtd.27/03/2012 directed KSRTC to consider your representation after affording an opportunity for personal hearing. As per the order of the Hon'ble High Court personal hearing has been conducted on 26/06/2012. The representation submitted by you at the time of personal hearing has been examined in

detail with relevant records, rules in force and the depositions made by you based on the cited order. Regarding your requests in the representation, it is informed that.

1. The eligible arrear salary will be drawn and disbursed from Kollam unit without further delay.
2. All the eligible pensionary benefits have already been released.
3. Not eligible for any interest in this regard.
4. Your grade promotion as Driver 1st Grade has been granted w.e.f. 11/10/2010 and pay fixed at Rs.7090/- under rule 28A(a) KSR.

Your representation is disposed of accordingly.”

6. Option form for fixation of pay under Rule 28A(a) and (b) of Part 1 KSR placed on record reads as under:

“OPTION FORM

OPTION FOR FIXATION OF PAY UNDER RULE 28A PART I KSR

(a). Consequent upon my promotion as.....with effect fromFN/AN, I hereby opt the fixation of pay under Rule 28A, in the higher scale of pay of the promoted post, with effect from the date of promotion, without any review consequent on accrual of increment in the lower scale.

(b). consequent upon my promotion as..... with effect from.....FN/AN, I hereby opt the initial fixation of my pay at the stage in the time scale of pay of the promoted post next above my pay in the scale of pay of the lower post on the date of promotion, and thereafter under Rule 28A in

the higher scale of pay of the promoted post based on the pay in the lower post with effect from.....ie from the date of accrual of next increment in the scale of pay of the lower post.

Place
Date

signature"

7. Petitioner had basically opted under Rule 28A(b) instead of Rule 28A(a). From perusal of the impugned order extracted above, respondents have also taken the aid of Rule 28A(a) ie., treating the option of the petitioner under Rule 28A(a) instead of Rule 28A(b). I am of the view that the matter at the level of respondents required to be revisited by considering the option of the petitioner under Section 28A(b) instead of 28A(a). Respondents are to take into consideration the amendment of KSR Part I Rule 28A and Rule 37(a) while considering the case of the petitioner. Petitioner is directed to submit a fresh representation along with the calculation to the Managing Director, KSRTC, who himself or through any person delegated shall take a call in accordance with law by affording an opportunity of hearing and decide the case of the

petitioner as reflected in the representation in pursuance of the direction of this Court. Let this exercise be taken either virtually or through physical mode within a period of two months from the receipt of the certified copy of the judgment and in case the respondents find merit in the request of the petitioner of pending dues as claimed, that shall be released within a period of one month thereafter. If not received within that time, petitioner shall be at liberty to assail the same in accordance with law.

Writ petition disposed of accordingly.

Sd/-
AMIT RAWAL
JUDGE

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APPENDIX OF WP(C) 31410/2012

PETITIONER EXHIBITS

EXHIBIT-P1	TRUE COPY OF THE ORDER OF THE MANAGING DIRECTOR OF THE KERALA STATE ROAD TRANSPORT CORPORATION DATED 14-11-2006
EXHIBIT-P2	TRUE COPY OF THE REPRESENTATION DATED 17-12-2011 ALONG IWITH THE STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE MANAGING DIRECTOR OF THE CORPORATION
EXHIBIT-P3	TRUE COPY OF THE LETTER OF TEH MANAGING DIRECTOR OF THE CORPORATION DATED 16- 07-2012
EXHIBIT-P4	TRUE COPY OF THE LETTER DATED 24.09.2012 SENT BY THE PETITIONER TO THE 4TH RESPONDENT ALONG THE ACKNOWLEDGEMENT CARD